Editor's note: Appealed -- remanded to IBLA, sub nom. Baca v. Menyhert, Civ.No. 88-1167 SC (D.NM March 28, 1990) -- See 120 IBLA 308 (Sept. 11, 1991).

CITY OF SANTA FE ET AL.

IBLA 86-1531 Decide August 15, 1988

Appeals from a decision of the New Mexico State Director, Bureau of Land Management, approving proposed land exchange NM 39284.

Affirmed.

1. Exchanges of Land: Generally--Private Exchanges: Public Interest

   Sec. 206(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1716(a) (1982), authorizes the Secretary of the Interior to exchange public lands, or an interest therein, if the public interest will be well served by such exchange. Protests against an exchange are properly dismissed if the protestants do not establish that the proposed exchange would violate the Act, applicable regulations, or contravene the public interest.

2. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

   A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1716 (1982), is properly dismissed when a protestant holding a grazing permit on the lands to be exchanged has not established that his rights under the grazing regulations would be violated, that BLM did not adequately consider the public interest, or that the lands exchanged are not of equal value.

APPEARANCES: Thomas E. Baca, City Manager, for City of Santa Fe; Joseph A. Sommer, Esq., Eric M. Sommer, Esq., Santa Fe, New Mexico, for Richard Hager; Edward L. Klopfer, President, David A. Garcia, Director, for Puesta del Sol Property Owners Association; Shannon Robinson, Esq., Albuquerque, New Mexico, for Louis Menyhert; Gayle E. Manges, Esq., Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The City of Santa Fe (City) has appealed a July 2, 1986, decision by the New Mexico State Director, Bureau of Land Management (BLM), approving land exchange NM 39284, proposed by Louis Menyhert (Menyhert). The proposed exchange involves the conveyance by the United States of 280 acres of public land approximately 3 miles west of the city limits of Santa Fe, New Mexico (the Federal parcel), in exchange for Menyhert's conveyance of 8,054.99 acres of private land (Taos lands) in Taos County, New Mexico.

The proposal is also challenged on appeal by property owners living near or adjacent to the Federal parcel, and by Antonio J. Baca, who holds a grazing preference (Allotment 0543) which would be decreased by 280 acres and 36 animal unit months (AUM's), if the exchange is consummated.

A notice of realty action (NORA) describing the proposed land exchange was published at 50 FR 23838 (June 6, 1985). The NORA states that the Federal parcel had a high value for residential development but only a limited potential for public use, and that the Taos lands had high values for wildlife habitat, livestock grazing, and public recreation.

The NORA stated that the Taos lands contained an aggregate of 6,284.99 acres. BLM's Appraisal of Offered Land, approved December 24, 1985, lists the aggregate total at 6,314.99 acres, which is the correct sum of the individual parcels described. 1/ BLM initially appraised the Taos lands as having a fair market value of $842,000. In a separate appraisal of the Federal parcel, approved November 13, 1985, BLM estimated the fair market value of the Federal parcel at $980,000.

In an "Amendment to the Menyhert Exchange" BLM stated that, "in order to equalize values more closely," Menyhert had offered an additional 1,740 acres in Taos County. BLM appraised this additional acreage (grazing land) at $124,000, bringing the fair market value of the Taos lands to $966,000 and its acreage to 8,054.99 acres.

In his decision, the State Director stated that an exchange would provide substantial benefit to wildlife and additional lands for public use, and found the exchange to be in the public interest. He noted that the Federal parcel was one of a number of parcels in the Santa Fe area previously identified in BLM planning documents as land suitable for other than Federal ownership. He observed that the lands identified as suitable

1/ The NORA incorrectly lists the acreage for T. 27 N., R. 11 E., New Mexico Principal Meridian, sec. 1, and for T. 29 N., R. 9 E., New Mexico Principal Meridian, sec. 13: NE^ NE^ NE^, S\ NE^ NE^, SE^ NE^, SW^ NW^, NE^ SW^, W\ SW^, SE^. BLM's Appraisal of Offered Land lists the acreage for these parcels as 639.92 and 390 acres, respectively. The NORA states:
"The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest."

for disposal were surrounded by private land and difficult to manage for many reasons, including difficult to nonexistent access, difficult boundary determination, and a high degree of unauthorized use associated with the surrounding private lands.

On appeal, the City asserts that the proposed exchange fails to meet regulatory criteria, and would result in a loss of open space and recreational utility. The City seeks to have the exchange deferred until impacts associated with private development could be evaluated by the City and the City has had an opportunity to design a master plan for the area. These considerations have been endorsed by Puesta del Sol Property Owners Association, who allege that BLM can manage the Federal parcel much more easily than the noncontiguous, remote Taos lands.

Richard Hager, who is a landowner in the area of the Federal parcel, charges that the proposed action was undertaken without regard for the interests of local property owners and the future welfare of the City. He argues that the Federal parcel must be retained by BLM to prevent objectionable uses and to allow the study of zoning and the enactment of ordinances. He predicts that the exchange could result in chaotic urban sprawl with attendant social problems, and asserts that the interests of New Mexico citizens should be paramount to concerns for wildlife in Taos County. Hager states that there are two easements serving the Federal parcel, and it is thus neither isolated nor difficult to manage.

Grazing lessee Antonio Baca alleges that he was given improper notice of the exchange, and was confused by BLM's NORA, which stated in part: "A BLM grazing allotment will be reduced by 280 acres, but the amount of grazing use will remain unchanged." Baca also seeks assurance that he will receive reasonable compensation for his interest in range improvements on the Federal parcel if the exchange takes place. He states that the exchange would sever his access to adjoining land he leases from Hager. Baca also repeats the arguments advanced by the other appellants, contending that the Federal parcel is a natural area whose scenic and recreational values outweigh the benefits of commercial development, and that urban growth is not needed in the area.

[1] Section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1716(a) (1982), provides that Federal land may be disposed of by exchange when "the Secretary * * * determines that the public interest will be well served by making that exchange." In applying the "public interest" requirement to a proposed disposal or exchange, the Secretary is directed by section 206(a) of FLPMA to give "full consideration" to

> better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and [provided] the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the value of the non-Federal lands or interest and the public objectives they could serve if acquired.

43 U.S.C. | 1716(a) (1982). The words "public interest" take meaning from the purposes of the regulatory legislation. NAACP v. FPC, 425 U.S. 662, 669 (1976).

The applicable regulation states that the objective of exchanges "is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in Part 1601 of this title." 43 CFR 2200.0-2. Part 1601 of 43 CFR pertains to the planning, programming, and budgeting responsibilities of BLM. The stated purpose of Part 1601 is

> to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses. [Emphasis added.]

43 CFR 1601.0-2.

An obvious corollary to a determination of whether the transfer of public land would serve the public interest is the evaluation of whether the transfer would adversely impact the public interest. Thus, BLM must assess the impact of proposed or anticipated development of the public land it passes out of Federal ownership. Mendiboure Ranches, Inc., 90 IBLA 360, 365 (1986); National Wildlife Federation, 82 IBLA 303 (1984). In the case now before us BLM has performed both of these assessments. Its appraisal of the Federal parcel states that this parcel lies outside of the City-County Planning Commission's "Southwest Sector Plan," is zoned rural residential, and is subject to county government jurisdiction. BLM found the highest and best use of the Federal parcel to be for rural homesite subdivision development (Appraisal, Selected Land, at 10-11).

The appraisal document contains the following statement regarding access to the Federal parcel:

> The property is assumed to have legal access from Calle Francisca by way of two separate 470 ft. x 50 ft. easements located at different points within the Pinon Hills subdivisions. Calle Francisca is a designated county road and it and the two easements are dedicated on a subdivision plat approved by the city and county of Santa Fe on July 29, 1964, and August 5, 1964, respectively. The approved plat was filed for record on June 23, 1967, and was recorded in Book 16, page 29, of the Santa Fe County plat records. (See addenda for copies of these plats). Calle Francisca is accessible from West Alameda by way of 1 \ miles of other subdivision roads, all dedicated county roads. The proposed western bypass alternative routes all show a connection with West Alameda near or within 1/2 mile of the southeast corner of Pinon Hills subdivision. As such, the subject property should be within 1 \ to 2 miles of an intersection with the bypass, a proposed limited access arterial roadway.

> At present, the property does not have physical access at the legal access locations. The least circuitous route is by way of short segments of a pipeline road and a gas well exploration road (approximately 0.4 miles) from Calle Estevan in Pinon Hills to the SW corner of the property.
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> Previously, this writer indicated that primary access routes into the neighborhood in order of desirability are Tano Road, Buckman Road and West Alameda. The market reflects this observation with higher prices, especially for properties with access from Tano Road. With the reconstruction and paving of Buckman Road (now Camino La Tierra) this route could become as desirable as Tano Road, however, there is no market evidence to reflect this as of yet. There is not enough data to establish a price relationship between West Alameda and the other two access routes. [Emphasis added.]

(Appraisal, Selected Land, at 10, 12). This evaluation determination refutes the arguments on appeal directed to the ease of access to and management of the Federal parcel.

In any event, access is not the only criterion for effective management. A showing that a Federal parcel may be no more difficult to manage than other nearby BLM parcels will not render invalid an otherwise proper exchange. As noted earlier, several appellants urge that the exchange should be postponed until more local planning is in place. The record shows that the local government body having planning and zoning authority over the Federal parcel is the County of Santa Fe (County). The County has expressed that it has no objection to the exchange. In addition, the Board of County Commissioners has prepared regulations which would govern any proposed development if the exchange takes place. 2/ Thus, there is no support for the allegation voiced on appeal, that chaos, in the form of urban sprawl and squalor, would follow on the heels of the exchange.

The allegation that the exchange was planned without regard for the local property owners also appears to be without merit. All interested parties were sent a copy of the NORA. Public meetings were held in Santa Fe and Taos, and a hearing was held in Santa Fe, on June 16, 1986. The proposal also received full coverage in the local press.

Earlier, we set out the statutory and regulatory guidelines for assuring that the public interest will be served by an exchange of lands. The elements of the public interest which would be served by the proposed exchange of lands are expressed in BLM's May 10, 1985, land report and summarized in the July 10 decision of the State Director. The exchange will facilitate Federal protection of critical wildlife habitat, protection of

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2/ See letters dated May 1, and June 18, 1986, from the County of Santa Fe to the State Director.

lands adjacent to the Rio Grande Wild and Scenic Corridor, improve public access to other public lands, and consolidate public lands for more efficient management (Decision at 2). Appellants have failed to significantly dispute these findings. Although there may be some detrimental effect as a result of the conveyance of the Federal parcel, a public benefit will also result. When the public benefit resulting from the acquisition of the Taos lands is also considered, there is a clear showing that the exchange is in the public interest. Therefore, appellants have failed to show that the exchange would be contrary to the public interest as expressed in section 206(a) of FLPMA.

[2] We turn now to additional issues raised in the appeal filed by Antonio Baca. The holder of a grazing permit does not have a vested right in land covered by his permit, and such land is available for an exchange pursuant to section 206 of FLPMA. Land subject to a grazing permit is not exempt from exchange merely because it is being used for grazing or because other land exists that is not grazed. Seven Star Ranch, Inc., 78 IBLA 366 (1984).

By letter dated March 27, 1985, the Taos Resource Area Manager notified Baca that, by virtue of the exchange, the acreage in his allotment would decrease by approximately 280 acres, and by 36 AUM's (six cattle per year). Citing 43 CFR 4110.4-2, the letter noted that when public lands are disposed of, permittees shall be given 2 years' prior notification. Baca received this letter in late March or early April 1987.

In a letter dated October 1, 1985, to Senator Domenici, the State Director explained:

> Our records show that Mr. Baca was notified in March 1985 of the possible land exchange and of the fact that his grazing permit could be reduced by six animals. In the preparation of the environmental assessment and land report, it became evident that his cattle were not using the area in question and, therefore, no reduction in Mr. Baca's grazing permit would be necessary. He would be allowed to continue to graze the same number of cattle on the acreage remaining in his allotment. It was also noted that no range improvements were located on the land offered for exchange.

In a follow-up letter, dated December 24, 1985, the State Director corrected himself, noting that Baca had an interest in a fence which had been constructed on the Federal parcel, and stated that Baca would be compensated for this improvement, should the exchange be consummated. In its answer to the appeal filed by Baca, BLM notes that "reasonable compensation for authorized range improvements if any, will be provided as required by 43 CFR 4120.3-6" (Response at 19).

We find that Baca was neither deprived of notice nor of any other rights to which he is entitled under the grazing regulations. His grazing use is not a bar to the exchange and the matter of his access to lands leased from Richard Hager is a matter to be resolved between those two parties.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge